

Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
 OFFICE OF THE SECRETARY

In the Matter of)

Implementation of the Cable Television)
 Consumer Protection and Competition Act)
 of 1992)

MM Docket No. 92-259

Broadcast Signal Carriage Issues)

REQUEST FOR STAY

Yankee Microwave, Inc. ("Yankee"), by its attorneys and pursuant to Section 1.43 of the FCC's rules, hereby requests that the Commission stay the effective date of its rules implementing the retransmission consent provisions of the Cable Television Consumer Protection and Competition Act of 1992 (the "Act") -- specifically that portion of the rules referred to as the "superstation exemption."¹ In a "Petition For Emergency Reconsideration And Request For Modification Of Rules" filed simultaneously herewith, Yankee demonstrates that adoption of the "superstation exemption" is already having a devastating impact on Yankee's business involving microwave delivery of video signals to cable systems.² Yankee respectfully requests the Commission's rules be stayed pending Commission action on Yankee's Petition For Reconsideration.

The FCC's rules unfairly provide an exemption from

¹ See 47 C.F.R. § 76.64(b)(2).

² Yankee respectfully requests that the arguments made in its Petition For Reconsideration be incorporated herein and considered in connection with the instant Request For Stay.

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retransmission consent requirements for superstation signals delivered via satellite, but not the same signals delivered by microwave or other video distribution systems. As a result, cable systems have already notified Yankee they intend to cease microwave delivery of superstation signals in favor of satellite service to avoid the necessity of negotiating for retransmission consent rights and possibly paying significant fees. Cable systems which are being forced to abandon microwave delivery of signals are unlikely to return to the Yankee microwave network once they have invested in the necessary equipment for satellite reception.

Yankee has demonstrated that a stay of the Commission's rules is warranted.³ First, there is a substantial likelihood Yankee will succeed on the merits of its claim that the "superstation exemption" unfairly and arbitrarily discriminates against small microwave carriers such as Yankee. There is no legitimate rationale to prefer satellite over microwave carriers, and no indication of such an intent in the legislative history of the Act. Rather, the legislative history indicates a clear intent to grandfather all superstation signals that qualified as superstations as of May 1, 1991, regardless of the current means of delivery.

³ The FCC must consider four factors in determining whether a stay will be granted: (1) whether there is a substantial likelihood that the party will succeed on the merits of its claim; (2) whether the party will suffer irreparable injury if the stay is not granted; (3) whether the injury that the party will suffer outweighs the harm to the adverse party if the stay were granted; and (4) whether the public interest will be harmed if the stay is granted. See Washington Metropolitan Area Transit Comm'n v. Holiday Tours, Inc., 559 F.2d 841 (D.C. Cir. 1977); Virginia Petroleum Jobbers Ass'n v. FPC, 259 F.2d 921 (D.C. Cir. 1958).

Second, Yankee has demonstrated it will suffer irreparable injury if the stay is not granted. Several of Yankee's cable system customers have already indicated they intend to switch to satellite delivery of superstation signals to avoid retransmission consent requirements. Once these systems invest in the necessary equipment for satellite delivery, they are unlikely to return to Yankee's microwave network.

Third, the potential injury to Yankee far outweighs the harm to any other party if the stay were granted. Cable systems now being forced to make decisions on how to respond to the Commission's new rules would gain additional time from the stay to consider their options and potentially avoid the higher costs associated with satellite-fed signals. A brief delay in implementation of the new rules is likely to have little impact on superstations, themselves, since a relatively small percentage of cable systems receive such signals via microwave. Satellite carriers anticipating an unfair windfall from the FCC's current rule should not be heard to object to providing the Commission additional time to consider the anti-competitive effect of the "superstation exemption."

Finally, the public interest will benefit from grant of the stay. As indicated in Yankee's Petition For Reconsideration, the purpose of the Act is to promote competition in the video marketplace, protect consumers against monopoly rates, and prevent anti-competitive practices. The present language of the "superstation exemption" flies in the face of these goals. The

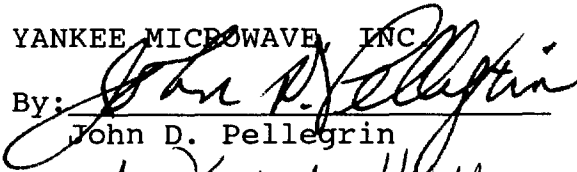
current rule forces cable systems to abandon microwave and eliminates competition for satellite carriers. The current rule will also increase subscriber rates for satellite-fed signals otherwise available at a lower cost from microwave providers. At least one cable multisystem operator has indicated it will switch from microwave to satellite delivery of superstations, offer the satellite-fed signals in a separate service tier, and pass on to subscribers the higher cost of satellite delivery.

WHEREFORE, for the foregoing reasons, Yankee Microwave, Inc. respectfully requests that the Commission stay the effective date of the superstation exemption to its retransmission consent rules pending consideration of Yankee's Petition For Reconsideration.⁴

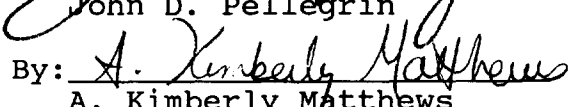
Respectfully submitted,

YANKEE MICROWAVE, INC.

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⁴ Yankee respectfully submits that the stay should be implemented by applying the superstation exemption to all superstation signals if those signals were superstations as of May 1, 1991, regardless of the current means of delivery of the signal. Such a rule would be consistent with legislative intent. In the alternative, the exemption should be stayed in its entirety to avoid unfair preferential treatment of satellite carriers.